

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TACUMA J. MWANZA.

Plaintiff,

vs.

FOSTER, et al.,

Defendants.

3:14-cv-00331-MMD-WGC

ORDER

Re: ECF No. 55

Plaintiff previously sought an order of this court allowing him to serve Defendant Bothe by publication due to the U.S. Marshal's inability to serve Defendant personally. When the court addressed Plaintiff's motion for service on Defendant Bothe by publication (ECF No. 52),¹ and Defendants' limited response (ECF No.53), the essential issue was if the court were to allow service by publication, in what newspaper should Plaintiff's notice be published. (ECF No. 54.) The court noted that without knowing where the Defendant resides or last resided, a party seeking to serve a summons and complaint by publication cannot properly identify a newspaper in which to publish that notice. (*Id.*, at 3.) The court therefore instructed counsel for Defendants to file a notice listing the county/counties of the last known residence of Defendant Bothe. The court's Order also provided that if counsel for Defendants contended that such notice would present any security concerns for Defendant Bothe, Defendants should lodge a request for reconsideration of that notice requirement. (*Id.*)

Now before the court is Defendants' Request for Reconsideration of Notice Divulging Last Known County of Defendant L. Bothe. (ECF No. 55.) Defendants' counsel recognizes that this court has

¹ Refers to court's Electronic Case Filing number.

1 to balance a former correctional officer's residential security concerns with Plaintiff's ability to properly
 2 serve a party defendant against whom an action has been allowed to proceed. (ECF No. 55 at 5-6.)²
 3 Defendants' counsel states:

4 If the Magistrate Judge does still deem service of process by publication
 5 appropriate, notwithstanding the reservations expressed herein, Defense
 6 counsel would likely have little issue with disclosing the county of a
 7 former employee to effectuate service of process by publication to
 whatever third party newspaper is appropriate (and paid for performing
 such service). That third party could then file proof of such service under
 seal with this Court, notifying the Parties of its completion.

8 (ECF No. 55 at 6.)³

9 Cognizant that the Federal Rules of Civil Procedure call for a dismissal of an action if not served
 10 within 120 days, the court concludes Plaintiff should at least be given an opportunity to serve Defendant
 11 Bothe by publication (inasmuch as discussed above it appears the U.S. Marshal could not effect personal
 12 service on Bothe. (ECF No. 38).) Therefore, by **December 1, 2015**, Defendants counsel shall file a
 13 notice addressing (1) what efforts counsel has undertaken to track down a current last known address
 14 for Defendant Bothe and that the most accurate address for the defendant is that appearing in ECF
 15 No. 28, and (2) disclose the county of Bothe's last known address. Plaintiff shall thereafter have until
 16 **December 31, 2015**, to file a renewed motion for service by publication which motion shall include the
 17 affidavit of due diligence required by Nev. R. Civ. P. 4(e)(1), and shall (1) advise the court the proposed
 18 newspaper of general circulation in which Plaintiff intends to publish the summons and complaint, and
 19 (2) how Plaintiff intends to satisfy the costs of publication. (See, Order, ECF No. 54, at 2-3.)⁴

20 **IT IS SO ORDERED.**

21 DATED: November 24, 2015.


 WILLIAM G. COBB
 UNITED STATES MAGISTRATE JUDGE

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 23
 24 ² Although Defendants have a pending motion to dismiss Plaintiff's amended complaint (ECF No. 48), at the present
 25 time, the allegations against Defendant Bothe have been allowed to proceed. (See, ECF Nos. 18, 44.) Whether a party may
 serve a named Defendant, by publication otherwise, is an issue separate from whether a motion to dismiss might lie against
 that party.

26 ³ The court appreciates counsel's recognition of the balancing of interests the court must undertake.

27 ⁴ The court does not understand the suggestion of Defendants' counsel that "the third party [newspaper] could then
 28 file proof of such service, under seal with this court notifying the parties of its completion." (ECF No. 55 at 6; emphasis
 added.) If the summons and complaint are published to the public, the court fails to perceive any reason proof of service
 "under seal" need be filed.